

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOTE-00 INR-07 NSAE-00 FAA-00 NSC-05 NSCE-00 INRE-00

SSO-00 SS-15 L-03 /053 W

-----041226Z 020977 /13

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FM AMEMBASSY LONDON

TO SECSTATE WASHDC NIACT IMMEDIATE 1230

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FOR COOPER AND KATZ (STATE), ADAMS AND DAVENPORT (DOT),
ROBSON (CAB).

PASS WHITE HOUSE FOR JOHNSTON AND COMMERCE FOR TOLO.

E.O. 11652: N/A

TAGS: EAIR, UK

SUBJECT: US-UK CIVAIR NEGOTIATIONS: USDEL REPORT ON
MEETINGS, MARCH 2-3

1. SECSTATE FOR TRADE (DELL) HOSTED LUNCHEON MARCH 2
IN HONOR BOYD. HE EXPRESSED DESIRE FOR PROGRESS,
SPEEDY RESOLUTION OF DIFFICULT ISSUES, HOPE FOR AGREE-
MENT BY 22 JUNE. DELL SAID PM WOULD RAISE SUBJECT OF
AIR BILATERAL IN MEETINGS WITH PRESIDENT 10-11 MARCH.

2. CAPACITY WORKING GROUP (HEADED BY BOYD, SHOVELTON)
MET MARCH 2 BUT COULD NOT CLOSE GAP ON PHILOSOPHIC
ISSUES. UKDEL WAS NOT RESPONSIVE TO USDEL CONCERN FOR
COMPETITIVE POSTURE OF CARRIERS AND VIEWED US PROPOSAL
AS UNWORKABLE. SHOVELTON SAID THAT DELL HAD INSTRUCTED
HIM NOT TO "WITHDRAW" UK PROPOSAL AND HE ASKED BOYD
RECONSIDER UK PROPOSAL FOR AIRLINES TO AGREE ON
CAPACITY. BOYD SAID THIS IMPOSSIBLE AND ATTEMPTED
FOCUS ATTENTION ON US PROPOSAL, WHICH (IT SHOULD BE
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NOTED) SHOVELTON HAS NOT SAID IS REJECTED BY UK.
MEETING ENDED INCONCLUSIVELY WITH BOYD ASKING BRITISH
TO CONSIDER COUNTERPROPOSALS BUT WITHIN CONTEXT US
DRAFT.

3. AT PLENARY MARCH 3, SHOVELTON SAID HE HAD BEEN
THINKING ABOUT LINK BETWEEN SCHEDULED AND CHARTER

SERVICES AND, WITHOUT BEING EXPLICIT, SAID UK MIGHT BE ABLE TO BE MORE FORTHCOMING ON CHARTERS FOR 1977 THAN TENTATIVE UNDERSTANDING DISCUSSED IN DECEMBER TALKS AND EVEN MORE FORTHCOMING FOR 1978 AND AFTER. THE "LINK" HE MENTIONED WAS NOT DEFINED, BUT IT IS QUITE OBVIOUS THAT SHOVELTON IS CONSIDERING A TRADEOFF OF A LIBERAL CHARTER REGIME FOR TIGHT CAPACITY CONTROL OF SCHEDULED SERVICES. IN ORDER SIDE TRACK THIS TACTIC, BOYD PROPOSED CHARTERS FOR 1977 BE DISCUSSED IN A SEPARATE WORKING GROUP HEADED BY BILLER AND ROGERS. SHOVELTON AGREED.

4. SHOVELTON WANTED DISCUSS AIR FARE ARTICLE BUT BOYD SAID US WANTED CONCENTRATE ON CAPACITY AND ASKED THAT POLICY LEVEL WORKING GROUP RESUME IN AFTERNOON. AGAIN SHOVELTON AGREED.

5. SHOVELTON THEN SAID THAT HE WAS "ASTONISHED" THAT US HAD TAKEN BRITISH AIRWAYS TO COURT ON CONTRACT CARGO RATES. THIS WAS MINOR ISSUE AND US ACTION WAS "HIGHLY PROVOCATIVE". HE ASSERTED US ACTION WAS CONTRARY BILATERAL AGREEMENT AND, WHILE HE WAS NOT ISSUING THREATS, UK WOULD HAVE TO RECONSIDER ITS FOREBEARANCE ON EXCESS BAGGAGE CHARGES, COMMISSION RATES, AND NATIONAL'S EX-MIAMI FARES. BOYD MADE A STATEMENT (AND GAVE SHOVELTON COPY) AS FOLLOWS:

A) THERE CAN BE NO ARGUMENT THAT THE UNITED STATES FAILED TO COMPLY WITH THE PROCEDURES SET FORTH IN THE RATE ARTICLE OF THE BILATERAL. THAT ARTICLE PROVIDES LIMITED OFFICIAL USE

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THAT WHERE ONE PARTY "IS DISSATISFIED WITH ANY NEW RATE PROPOSED BY THE AIR CARRIER" OF THE OTHER PARTY "IT SHALL SO NOTIFY THE OTHER" PARTY WITHIN THE FIRST FIFTEEN DAYS OF THE 30-DAY TARIFF FILING PERIOD "AND THE CONTRACTING PARTIES SHALL ENDEAVOR TO REACH AGREEMENT ON THE APPROPRIATE RATE". IT ALSO PROVIDES "...IF NO SUCH AGREEMENT CAN BE REACHED PRIOR TO THE EXPIRY OF SUCH THIRTY DAYS, THE CONTRACTING PARTY RAISING THE OBJECTION TO THE RATE MAY TAKE SUCH STEPS AS IT MAY CONSIDER NECESSARY TO PREVENT THE INAUGURATION OR CONTINUATION OF THE SERVICE IN QUESTION AT THE RATE COMPLAINED OF".

B) IT IS QUITE CLEAR THAT, IF THE GOVERNMENT RECEIVING THE NOTICE OF DISSATISFACTION WISHES TO CONSULT FOR THE PURPOSE OF REACHING AGREEMENT BEFORE THE OTHER GOVERNMENT EXERCISES ITS RIGHT TO PREVENT USE OF THE FARE, SUCH CONSULTATIONS MUST BE HELD BEFORE THE END OF THE 30-DAY PERIOD. THE U.K. DID NOT REQUEST SUCH CONSULTATIONS. WE DID NOT, AND DO NOT, CONSTRUE MR. ROGERS'

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DEC. 16 LETTER AS CONSTITUTING SUCH A REQUEST. THE LETTER NOWHERE REFERS TO A REQUEST FOR CONSULTATIONS, NOR DOES IT CITE THE RELEVANT PROVISION OF THE AGREEMENT. IN FACT, IT CAN BE CONSTRUED AS AN INDICATION THAT THE U.K. DID NOT WISH TO CONSULT BEFORE THE END OF THE 30 DAY PERIOD, A CONCLUSION SUPPORTED BY THE FACT THAT MR. ROGERS' LETTER WAS TRANSMITTED BY MAIL AND NOT RECEIVED UNTIL DEC. 22. THE LETTER MERELY PLACES ON RECORD MR. ROGERS' INTERPRETATION OF DISCUSSIONS WITH MR. BILLER.

C) MOREOVER, THE U.K. COULD NOT HAVE BEEN UNAWARE OF THE C.A.B.'S OBJECTIONS TO THE PROPOSED CONTRACT CARGO RATES. THE MATTER WAS DISCUSSED AS LONG AGO AS THE SEPTEMBER CONSULTATIONS PRIOR TO THE DECEMBER MEETING. ALTHOUGH AT THAT POINT B.A. HAD NOT SUBMITTED A PROPERLY FILED TARIFF, THE U.S. DELEGATION MADE CLEAR THAT THERE WERE SUBSTANTIAL LEGAL PROBLEMS WITH CONTRACT CARGO RATES. (1)

D) FOOTNOTE (1) THE SUBSTANTIVE LEGAL PROBLEM INVOLVED IN THE CONTRACT RATES -- THAT IS, THE ISSUE OF UNJUST DISCRIMINATION -- WAS THE SUBJECT OF AN EXTENSIVE CONFERENCE BETWEEN THE C.A.B. STAFF AND CARRIER REPRESENTATIVES.

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SENTATIVES, AT WHICH A REPRESENTATIVE OF THE BRITISH EMBASSY WAS PRESENT. THIS CONFERENCE WAS HELD IN NOVEMBER PRIOR TO THE FILING OF THE TARIFF WHICH WAS SUBSEQUENTLY SUSPENDED. AT THAT MEETING, THE BRITISH WERE GIVEN A SERIES OF CITATIONS TO PRIOR BOARD CASES HOLDING SIMILAR RATES UNLAWFUL.

E) IN SUM, THERE WAS NO FAILURE ON OUR PART EITHER TO GIVE TIMELY NOTICE OF DISSATISFACTION, OR TO APPRISE THE BRITISH FULLY OF THE BASIS OF OUR POSITION, A BASIS WHICH IS SPELLED OUT IN DETAIL IN THE BOARD'S ORDER. IN THE LIGHT OF OUR ACTIONS, I DO NOT SEE HOW WE CAN BE ACCUSED OF FAILING TO CARRY OUT OUR OBLIGATIONS UNDER THE BILATERAL.

F) FINALLY, OUR LAW REQUIRING ADHERENCE TO TARIFFS IS CLEAR AND WELL KNOWN TO BOTH BRITISH AIRWAYS AND YOURSELVES. THE CARRIER APPEARS TO HAVE FLAGRANTLY VIOLATED THAT LAW BY OFFERING THE CONTRACT RATES AFTER SUSPENSION OF THE PROPOSED RATES BY THE C.A.B. MOREOVER, I UNDERSTAND B.A. WAS FULLY AWARE SEVERAL WEEKS AGO THAT THE C.A.B. BUREAU OF ENFORCEMENT WAS ACTIVELY INVESTIGATING THE MATTER WITH A VIEW OF TAKING LEGAL ACTION. I WOULD ASSUME THAT THESE INVESTIGATIONS WERE REPORTED TO YOU. NO ONE CAN CLAIM SURPRISE.

6. SHOVELTON PLEADED WITH BOYD TO CALL OFF COURT CASE AND, PENDING A RESPONSE, CALLED OFF ALL FURTHER MEETINGS OF DELEGATIONS AND WORKING GROUPS. USDEL DID NOT AGREE THAT THIS RELATIVELY MINOR ISSUE SHOULD IMPEDE RENEGOTIATION TALKS. JOINT WORKING GROUP CONSIDERING MATTER LATER ON MARCH 3. UK ACCEPTED OUTCOME WHEREBY US WOULD NOT DROP CASE AGAINST B.A. BUT WOULD DEFER IT AND WOULD ADVISE HMG BEFORE MOVING AHEAD.

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Message Attributes

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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
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